Filed 8/10/10 In re M.B. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re M.B., a Person Coming Under the Juvenile Court Law.	B220856 (Los Angeles County Super. Ct. No. CK 33355)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. C.G., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. D. Zeke Zeidler, Judge. Affirmed.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Judith A. Luby, Principal Deputy County Counsel, for Plaintiff and Respondent.

C.G., the mother of minor M.B., appeals from the disposition order in which the court denied her reunification services pursuant to Welfare and Institutions Code section[1] 361.5, subdivision (b)(10). Appellant contends the court abused its discretion in denying her services based on her failure to reunify with a sibling of M. and on the lack of reasonable efforts to resolve the problem that brought the sibling into the system. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Prior Dependency Case

On April 1, 1998, the Department of Children and Family Services (Department) filed a section 300 petition on behalf of M. and three siblings. In addition to the allegations involving appellant's drug use, the petition alleged M. had been hospitalized after ingesting an unknown quantity of PCP from a bottle. The petition also alleged M. was found in a deplorable state of hygiene and appellant's home was filthy and unsanitary. After remaining with their maternal grandmother, M. and two of her siblings were returned to appellant's care. C. remained in a legal guardianship with the maternal grandmother.

II. Current Dependency Case

A. Detention

On July 4, 2009, police were called to a domestic violence incident between appellant and father. Appellant pushed father and then he punched her, rendering her unconscious. M. was present during the fight. M. told the police that appellant had been

---

[1] All statutory references are to the Welfare and Institutions Code.

drinking alcohol prior to the incident, that appellant was a heavy drinker, and that previous domestic violence had involved appellant hitting father.

A Department social worker (CSW) interviewed M., appellant and maternal grandmother. M. was left in appellant's care, but a safety plan was developed which included appellant attending counseling for domestic violence and obtaining a restraining order against father. The CSW gave appellant referrals to substance abuse treatment programs and individual counseling, in which appellant agreed to enroll. On July 15, appellant tested positive for PCP. Appellant admitted she was distressed about her pending divorce from father and had relapsed, but she claimed she had only used the drug once.

On July 16, appellant jumped out of a second-story window while under the influence of PCP. In the hospital, appellant said she did not remember anything. Appellant agreed M. could be placed with a maternal aunt until the family participated in a Team Decision Making (TDM) meeting and she was provided with additional referrals for individual counseling, drug treatment and relapse prevention.

M., who was 13 years old, was not there when appellant jumped out the window, but she saw appellant run through the alley and get into an ambulance afterwards; that experience was very frightening to M.

Appellant failed to show up for the scheduled TDM meeting on July 29; later she said she forgot about it. Appellant tested positive for PCP on July 31. There was no evidence appellant had enrolled in a drug treatment program. On August 19, appellant informed the CSW that M. was now staying with the maternal grandmother. On August 21, appellant missed another TDM meeting, arriving an hour late. M. told the CSW she did not want to return to appellant's care; she wanted to stay with maternal grandmother.

Appellant's criminal record showed an arrest and diversion for possession of cocaine, convictions for child cruelty and transporting PCP in 2002, a 2004 conviction for theft, a warrant violation in 2004 for possession of a controlled substance, and a parole violation in 2009 for reckless driving.

Appellant now admitted she had used PCP on and off since 1996; the last time was in early July 2009. Appellant further admitted she drank beer from time to time, had a criminal history, and a lot of the crimes involved drugs.

The Department took M. into protective custody on August 21 and left M. placed with maternal grandmother. At the hearing, the court found a prima facie case M. was a child described by section 300, placed M. with maternal grandmother and gave appellant monitored visits twice a week. The court ordered the Department to investigate grandmother pursuant to the Adoption and Safe Families Act (ASFA) and to assist her in obtaining a bed and adequate clothing for M.

B. Adjudication/Disposition

1. Report

The Department filed a report on October 7. Despite many attempts to contact appellant, the CSW was unable to do so. Father stated M. had told him appellant was using PCP so he went by appellant's house to check up on things but stopped because his new girlfriend did not like it. Appellant began to harass father and his girlfriend; at one point, appellant attempted to stab the girlfriend after stealing father's bicycle.

For most of his relationship with appellant, father was in prison. Father denied knowing about appellant's drug use at the beginning of their relationship; he did not find out appellant used drugs until 2002. In 2005, appellant went into an inpatient program and drug tested, but after she got out, she started using drugs again. Appellant had worked at Roscoe's Chicken in Long Beach and been promoted, but she was fired because she came to work high on drugs. Appellant had attempted suicide in early August 2009 and been hospitalized.

Maternal grandmother stated appellant and father had been together for 13 years and married for five or six years. Maternal grandmother believed appellant had used drugs for 15 to 20 years.

M. said when appellant drank alcohol, she acted "'weird and funny,'" and if appellant drank too much, she would go to her room and sleep. M. also believed that appellant used drugs.

Although appellant was allowed twice-a-week visitation, she had seen M. only once, briefly, in early September 2009. The Department recommended appellant not be provided with reunification services as she had failed to reunify with C.

2. The Hearing

The October 7 hearing was continued as appellant was not present and father wanted a contested hearing.

Appellant was not present at the continued hearing on November 2. Appellant's attorney asked the court to dismiss the petition based on the fact that appellant's drug test results said "presumed" rather than "positive." The court stated it had read and considered the evidence, found notice was proper and sustained the petition under section 300, subdivision (a) (for the parents' domestic violence in M.'s presence) and subdivision (b) (for appellant's 13-year history of substance abuse, her two recent positive drug tests, her failure to reunify with C. causing C. to be given permanent placement services, the domestic violence between the parents and appellant's ongoing use of PCP).

Regarding disposition, appellant's attorney noted appellant had regained custody of all the children except C., which she claimed meant there had been a special arrangement as to C., not that appellant had failed to reunify with that child. The court took judicial notice of the sustained petition, minute orders and the disposition case plan from the 2000 dependency case.[2] The court considered a Department report that seemed to indicate C. was left with maternal grandmother due to the fact she had been raised by maternal grandmother for the majority of C.'s life. Counsel argued that negated a finding

---

[2] Those documents are not part of the record on appeal and neither party asked this court to augment the record or take judicial notice of those documents.

under section 361.5, subdivision (b)(10) because appellant could have taken custody of C. in 2000. The court noted appellant had not shown she had done anything to address the problems that had brought her children before the court in the prior case. Counsel argued that fact was not relevant unless that section applied.

M.'s attorney noted M. had been detained in 1998 due to appellant's PCP use and the case was back in court on the same issue. County counsel noted that maternal grandmother had stated appellant had used drugs for 15 to 20 years and appellant's use was ongoing and that while appellant might have managed to stop for a time and complete a program, she had not resolved the problem.

The court declared M. a dependent and denied reunification services to appellant under section 361.5, subdivision (b)(10) due to her failure to reunify with C. The court found that appellant had failed to make a reasonable effort to treat the problems that led to C.'s removal and that although appellant had refrained from PCP usage long enough to get her children back, she then resumed her drug use.

Appellant filed a timely notice of appeal from the disposition order.

DISCUSSION

The court denied reunification services to appellant pursuant to section 361.5, subdivision (b)(10), which provides that services need not be provided when the court finds:

> That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.

This court reviews such an order for substantial evidence. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96.) In making that determination, the court decides if the evidence was reasonable, credible and of solid value, such that a reasonable trier of fact could find the order was proper based on clear and convincing evidence. (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 839-840.)

A. Appellant failed to reunify with C.

Appellant asserts the situation with regard to M.'s sibling C. was "blurred." As support, appellant cites to her counsel's suggestion that there must have been an independent arrangement between appellant and maternal grandmother (i.e., for the child to continue living with maternal grandmother who had been C.'s mother for five years) because she (appellant) successfully reunified with the other three children. Thus, appellant reasons she did not fail to reunify with C. Appellant's counsel is speculating about the reason appellant did not reunify with C. It is also possible that taking custody of four children was too much for her. Appellant did not attend either disposition hearing and offered no evidence as to why she did not reunify with C. The fact of the matter is that at the end of the prior case C. was in a legal guardianship with maternal grandmother. Even if it was by choice, appellant failed to reunify with C.

B. Appellant failed to resolve the problems that brought C. into the system.

Appellant argues that nine years had elapsed from the prior dependency case and the mere fact she had not entirely abolished her drug problem does not preclude the court from determining she had made reasonable efforts to treat it. (See *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464.) Appellant relies on the court's statement during oral argument that "she had made a reasonable effort" and suggests that rather than finding if she had made a reasonable effort to treat the problem, instead the court

looked at whether services would be in M.'s best interest, which are not to be considered until after the court finds section 361.5. subdivision (b)(10) applies. (§ 361.5, subd. (c); *Mardardo F. v. Superior Court* (2008) 164 Cal.App.4th 481, 492 [It is the parent's burden to affirmatively show services would be in the child's best interest.].)

The evidence from several witnesses verified that appellant had not resolved her drug problem even though she was not caught up in the system again until the police were called to respond to an incident of domestic violence. M. stated appellant drank and she thought appellant was using drugs. Maternal grandmother stated appellant had used drugs for 15 to 20 years. Although father indicated he did not become aware of appellant's drug use until 2002, he stated she had completed a program in 2005 but then starting using drugs again and been fired for coming to work high. Appellant tested positive for PCP, jumped out a second story window under the influence of PCP and admitted to using drugs on and off since 1996. Thus, substantial evidence supports the finding she had not made a reasonable effort to treat the problem that led to C.'s removal.

Appellant suggests offering reunification services was in the best interests of M.; however, there was no evidence that doing so would be in M.'s best interests especially given appellant's long history of drug use and her seeming indifference to the dependency proceedings. Moreover, other than one visit with M. appellant had not participated in her case plan.

DISPOSITION

The order is affirmed.

WOODS, Acting P. J.

We concur:

ZELON, J. **JACKSON, J.**